

APPENDIX B
TDH CONTRACT GENERAL PROVISIONS (Sample)

**GENERAL PROVISIONS FOR
TEXAS DEPARTMENT OF HEALTH GRANT CONTRACTS**

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Any alteration to this document constitutes a *counter-offer* and must be approved in writing by the Texas Department of Health.

**GENERAL PROVISIONS FOR
TEXAS DEPARTMENT OF HEALTH GRANT CONTRACTS**

ARTICLE 1. Preamble

PERFORMING AGENCY and RECEIVING AGENCY (the parties) hereby agree to make and enter into this grant contract (contract), to faithfully perform the duties prescribed by this contract and to uphold and abide by its terms and provisions. This contract consists of RECEIVING and PERFORMING AGENCY identifying data, Details of Attachment(s), authorized signatures, General Provisions, and Attachment(s) with detailed Scope(s) of Work, Special Provisions, budget(s), and exhibit(s) as applicable. This contract represents the complete and entire understanding and agreement of the parties. No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in this contract.

The person or persons signing and executing this contract on behalf of PERFORMING AGENCY, or representing themselves as signing and executing this contract on behalf of PERFORMING AGENCY, warrant and guarantee that he, she, or they have been duly authorized by PERFORMING AGENCY to execute this contract on behalf of PERFORMING AGENCY and to validly and legally bind PERFORMING AGENCY to all of its terms, performances, and provisions.

PERFORMING AGENCY assures compliance with this contract, including these General Provisions unless otherwise specified in any Special Provisions of the Attachment(s) to this document. If these General Provisions are revised or replaced during the term of this contract, and PERFORMING AGENCY does not consent to comply with the modified General Provisions, PERFORMING AGENCY may exercise its termination options in accordance with the General Provisions, Termination Article.

ARTICLE 2. Term

The time period of this contract shall be governed by the term(s) of the Attachment(s). No commitment of contract funds is permitted prior to the first day or subsequent to the last day of the term. The term may be extended or shortened by amendment(s).

ARTICLE 3. Funding

This contract is contingent upon the availability of funding for each Attachment for the term of the Attachment. PERFORMING AGENCY shall have no right of action against the State of Texas or RECEIVING AGENCY in the event that RECEIVING AGENCY is unable to fulfill its obligations under this contract as a result of lack of sufficient funding of RECEIVING AGENCY for any Attachment(s) to this contract. If funds become unavailable, provisions of the Termination Article will apply.

ARTICLE 4. Amendments

This contract may be amended only if the amendment is in writing and signed by individuals with authority to bind all parties.

PERFORMING AGENCY shall not perform and RECEIVING AGENCY shall not pay for the performance of different or additional services, work, or products except pursuant to an amendment of this contract that is executed

in compliance with this Article. RECEIVING AGENCY may not waive any term, covenant, or condition of this contract unless by amendment executed in compliance with this Article.

PERFORMING AGENCY shall plan expenditures so that any necessary budget revisions or amendments are executed no later than 90 days prior to the expiration of the Attachment term. PERFORMING AGENCY shall provide a written justification for any budget revisions and/or amendments. If a budget revision or amendment is requested during the last quarter of the Attachment term, the written justification must include a reason for the delay.

ARTICLE 5. Applicable Laws and Standards

This contract shall be interpreted under and in accordance with the laws of the State of Texas and enabling state rules. Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, will apply to this contract.

The Uniform Grant and Contract Management Act (UGCMA), Texas Government Code, Chapter 783, Vernon's Texas Codes Annotated (VTCA), and the Uniform Grant Management Standards (UGMS) as amended by revised federal circulars and incorporated in UGMS by the Governor's Budget and Planning Office, apply as terms and conditions of this contract and are adopted by reference in their entirety. If a conflict arises between the provisions of this contract and the provisions of UGCMA and UGMS, the provisions of UGCMA and UGMS will prevail unless expressly stated otherwise.

RECEIVING AGENCY must give prior approval for changes to contract Attachment(s) as specified by UGMS in "Part III-State Uniform Requirements for Grants and Cooperative Agreement, Subpart C-Post-Award Requirements, item ____30-Changes" and applicable federal Office of Management and Budget (OMB) circulars. RECEIVING AGENCY will provide copies of applicable OMB circulars, Code of Federal Regulations, and UGMS to PERFORMING AGENCY upon request. These documents are incorporated by reference as a condition of this contract.

PERFORMING AGENCY may not use funds granted under this contract to pay any person for influencing or attempting to influence an officer or employee of any agency; federal or state; a Member of Congress; an officer or employee of Congress; an employee of a Member of Congress in connection with the awarding of any contract or grant or the extension, continuation, renewal, amendment, or modification of any contract or grant (31 USC §1352 and UGMS). If at any time this contract exceeds \$100,000, regardless of funding source, PERFORMING AGENCY shall file with RECEIVING AGENCY a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of PERFORMING AGENCY in connection with that contract or grant, a certification that none of the funds provided by RECEIVING AGENCY have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom PERFORMING AGENCY has an agreement. PERFORMING AGENCY shall require any person who receives a subgrant or subcontract to file the same declaration, certification and disclosure with RECEIVING AGENCY. PERFORMING AGENCY shall file the declaration, certification, and disclosure at the time of application for the contract or grant; upon execution of a contract or grant unless PERFORMING AGENCY previously filed a declaration, certification or disclosure form in connection with the award; and at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any declaration, certification or disclosure previously filed. RECEIVING AGENCY will supply the certification form to PERFORMING AGENCY upon request.

PERFORMING AGENCY, if a corporation, certifies by execution of this contract that its payment of franchise taxes is currently in “good standing” with the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Tax Code, Chapter 171, VTCA). A false statement regarding franchise tax status is a material breach of this contract. If franchise tax payments become delinquent during the Attachment term, payments under this contract will be withheld until PERFORMING AGENCY's delinquent franchise tax is paid in full.

ARTICLE 6. Debarment and Suspension

PERFORMING AGENCY certifies by execution of this contract to the following:

- * it is not ineligible for participation in federal or state assistance programs under Executive Order 12549, Debarment and Suspension;
- * neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency;
- * it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency; and
- * it is not subject to an outstanding judgment in a suit against PERFORMING AGENCY for collection of the balance of a debt.

Where PERFORMING AGENCY is unable to certify to any of the statements in this Article, PERFORMING AGENCY shall attach an explanation.

PERFORMING AGENCY shall not contract with a subrecipient nor procure goods or services from a subcontractor, at any tier, which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549.

ARTICLE 7. Assurances

PERFORMING AGENCY shall establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

To the extent such provisions are applicable to PERFORMING AGENCY, PERFORMING AGENCY agrees to fully comply with the following:

- * Title VI of the Civil Rights Act of 1964, 42 USC §§2000d *et seq.* (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin, and includes the provision for effective communication and equal access to programs, services and activities to persons with Limited English Proficiency (LEP);
- * Title IX of the Education Amendments of 1972, as amended, 20 USC §§1681-1683, and 1685-1686, which prohibits discrimination on the basis of sex;
- * Section 504 of the Rehabilitation Act of 1973, 29 USC §794(a), which prohibits discrimination on the basis of disabilities and the Americans with Disabilities Act of 1990, 42 USC §§12101 *et seq.*, including the provision for effective communication and equal access to programs, services and activities to persons with sensory and speech impairments;
- * The Age Discrimination Act of 1975, as amended, 42 USC §§6101-6107, which prohibits discrimination on the basis of age;

- * The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- * The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism;
- * Public Health Service Act of 1912, §§523 and 527, 42 USC §290 dd-2, as amended, relating to confidentiality of alcohol and drug abuse patient records;
- * Title VIII of the Civil Rights Act of 1968, 42 USC §§3601 *et seq.*, as amended, relating to nondiscrimination in the sale, rental or financing of housing; and,
- * The requirements of any other nondiscrimination statute(s).

Collectively, such requirements obligate RECEIVING AGENCY to provide services without discrimination on the basis of race, color, national origin, age, sex, or disability. PERFORMING AGENCY shall carry out the terms of this contract in a manner which will assist RECEIVING AGENCY in complying with such obligations to the fullest extent of PERFORMING AGENCY's ability.

PERFORMING AGENCY agrees to comply with all or part of the following, as applicable:

- A. Texas Labor Code, Chapter 21, VTCA, which requires that certain employers not discriminate on the basis of race, color, disability, religion, sex, national origin, or age.
- B. Immigration Reform and Control Act of 1986, 8 USC §§1324a *et seq.*, as amended, regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this contract.
- C. Pro-Children Act of 1994, 20 USC §§6081-6084, regarding the provision of a smoke-free workplace and promoting the non-use of all tobacco products.
- D. The National Research Service Award Act of 1971, as amended, 42 USC §§288 *et seq.* and 6601 (P.L. 93-348 and P.L. 103-43) regarding the protection of human subjects involved in research, development, and related activities supported by any applicable award of federal assistance.
- E. The Clinical Laboratory Improvement Amendments of 1988, 42 USC §263a, which establish federal requirements for the regulation and certification of clinical laboratories.
- F. The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 56 Fed. Reg. 64175 (1991), 29 CFR §1910.1030, which set safety standards for those workers and facilities who may handle blood borne pathogens.
- G. Laboratory Animal Welfare Act of 1966, 7 USC §§2131 *et seq.* (P.L. 89-544), as amended, pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by this award of assistance.
- H. Article 9102, Texas Revised Civil Statutes (TRCS), as amended, pertaining to standards which eliminate architectural barriers for persons with disabilities.
- I. Health and Safety Code §165.004 (Vernon's Supp. 1998), relating to the promotion of breast-feeding by providing information that encourages breast-feeding to program participants who are pregnant women or mothers with infants. Promotional material may be requested from RECEIVING AGENCY by calling (512) 406-0744.
- J. Environmental standards pursuant to the following:
 - (1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§4321-4347 (P.L. 91-90) and Executive Order 11514 "Protection and Enhancement of Environmental Quality."

- (2) Notification of violating facilities pursuant to Executive Order 11738 “Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans.”
 - (3) Protection of wetlands pursuant to Executive Order 11990.
 - (4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988.
 - (5) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§1451 *et seq.*
 - (6) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, as amended, 42 USC §§7401 *et seq.*
 - (7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 USC §§300f-300j (P.L. 93-523).
 - (8) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- K. The Hatch Political Activity Act, 5 USC §§7321-29, which limits the political activity of employees whose principal employment activities are funded in whole or in part with federal funds.
 - L. The Federal Fair Labor Standards Act and the Intergovernmental Personnel Act of 1970, as applicable, concerning minimum wage and maximum hours.

PERFORMING AGENCY shall ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency’s (EPA) list of Violating Facilities and shall notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA (Executive Order 11738).

PERFORMING AGENCY shall comply with the flood insurance purchase requirements of 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Section 102 (a) requires the purchase of flood insurance in communities where the insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition proposed for use in any area that has been identified by the Secretary of the U.S. Department of Housing and Urban Development as an area having special flood hazards.

As required by Texas Family Code, §231.006, VTCA, a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, PERFORMING AGENCY agrees to comply with these provisions, certifies that it is not ineligible to receive the payments specified in this contract, and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

PERFORMING AGENCY shall comply with the requirements of the Texas Workers’ Compensation Act, Labor Code, Chapters 401-406, VTCA, and rules promulgated thereunder found at 28 Texas Administrative Code (TAC), Chapter 41, *et seq.*, which cover compensation for employees’ injuries.

When incorporated into a contract, standard assurances contained in the application package, if any, become terms or conditions for receipt of RECEIVING AGENCY funds. PERFORMING AGENCY and its subrecipients shall maintain an appropriate contract administration system to insure that all terms, conditions, and specifications are met.

PERFORMING AGENCY shall comply with all federal tax laws and is solely responsible for filing all required state and federal tax forms.

PERFORMING AGENCY shall comply with all applicable requirements of federal and state laws, executive orders, regulations and policies governing the activity described in Attachment(s), and with the applicable standard conditions or assurances prescribed by UGMS in “Part III-State Uniform Requirements for Grants and Cooperative Agreement, Subpart B-Pre-Award Requirements, item ____ .14-State Assurances.”

PERFORMING AGENCY assures it shall not transfer, assign or sell its interest in this contract, or in any equipment purchased with funds from this contract, without the written consent of RECEIVING AGENCY.

ARTICLE 8. Intellectual Property

Texas Health and Safety Code §12.020(a), VTCA, authorizes RECEIVING AGENCY to apply for, register, secure, hold, and protect a patent, copyright, trademark or other evidence of protection or exclusivity issued in or for intellectual property.

“Intellectual property” consists of inventions; discoveries; improvements to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; computer software; literary works; musical works with any accompanying words; dramatic works with any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; architectural works; words, names, symbols, devices, slogans or any combination thereof which have been adopted and used by RECEIVING AGENCY to identify goods and/or services and distinguish them from those of others; and any other creative works if they may be protected by a patent, copyright, trademark, service mark, collective mark, or certification mark or other evidence of protection or exclusivity whether or not protection or exclusivity has been applied for or received.

“Mark,” for purposes of trademark and service mark, includes a word, name, symbol, device, slogan or any combination thereof which has been adopted and used by RECEIVING AGENCY to identify goods and/or services and distinguish them from those of others. Federal trademark law also provides for collective marks and certification marks.

“Patent” protects any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement.

“Work made for hire” is a work prepared by an employee within the scope of his or her employment; or a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, and the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

The term “works,” for purposes of federal copyright law, includes software; literary works; musical works with any accompanying words; dramatic works with any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works, sound recordings and architectural works.

All work performed that results in the production of original books, manuals, films, or other original material is the exclusive property of RECEIVING AGENCY. All right, title, and interest in and to said property shall vest in RECEIVING AGENCY upon creation. All work performed shall be deemed to be a “work made for hire” for copyright purposes and made in the course of the services rendered pursuant to this contract. To the extent that title to any such work may not, by operation of law, vest in RECEIVING AGENCY or such work may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to RECEIVING AGENCY. RECEIVING AGENCY shall have the right to obtain and to hold in its own name any and all patents, copyrights, trademarks, service marks, certification marks, collective marks, registrations, or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. PERFORMING AGENCY shall ensure all rights, titles, and interest in and to the intellectual property are secured to RECEIVING AGENCY from PERFORMING AGENCY and its subrecipients. PERFORMING AGENCY agrees to give RECEIVING AGENCY and agrees to require its subrecipients to give RECEIVING AGENCY, or any person designated by RECEIVING AGENCY, all assistance required to perfect the rights defined in this Article, without any charge or expense beyond those amounts payable to PERFORMING AGENCY for the services rendered under the contract.

If federal funds are used to finance activities supported by the contract Attachment(s) that result in the production of original books, manuals, films, or other original material, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes (1) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright to which a PERFORMING AGENCY or its subrecipient purchases ownership with grant support. PERFORMING AGENCY shall place an acknowledgment of federal awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment shall be to the effect that “This publication was made possible by grant number _____ from (federal awarding agency)” or “The project described was supported by grant number _____ from (federal awarding agency)” and “Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency).”

In the event the terms of a federal grant award the copyright to PERFORMING AGENCY, RECEIVING AGENCY reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for RECEIVING AGENCY, public health, and state governmental noncommercial purposes (1) the copyright, mark, and patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a contractor purchases ownership with grant support.

PERFORMING AGENCY may publish the results of the contract performance if those results are subject to copyright law at its expense with prior RECEIVING AGENCY review and approval. RECEIVING AGENCY will not withhold the approval unreasonably. If RECEIVING AGENCY withholds approval, PERFORMING AGENCY may still publish the results of the contract performance but shall not reference the Texas Department of Health in any manner. If RECEIVING AGENCY approves and owns the copyright, any publication should include “©Texas Department of Health, 1100 West 49th Street, Austin, Texas, (the year of publication), All Rights Reserved.” If PERFORMING AGENCY is the copyright holder, any publication shall include acknowledgment of the support received from RECEIVING AGENCY. At least six copies of any such publication must be provided to RECEIVING AGENCY. RECEIVING AGENCY reserves the right to require additional copies before or after the initial review.

PERFORMING AGENCY and any subrecipient, as appropriate, must comply with the standard patent rights clauses in 37 Code of Federal Regulations §401.14 or Federal Acquisition Regulations 52.227.11.

ARTICLE 9. Historically Underutilized Businesses

RECEIVING AGENCY shall comply with Texas Government Code, Chapter 2161, VTCA, and 1 TAC §§111.11-111.24 whereby state agencies are required to make a good faith effort to assist historically underutilized businesses (HUBs) in receiving contract awards issued by the state to purchase “goods,” which are defined as “supplies, materials, or equipment,” services, or public works.

If PERFORMING AGENCY subcontracts a portion of this contract, PERFORMING AGENCY agrees to make a good faith effort to subcontract with HUBs during the performance of its contract Attachment(s) with RECEIVING AGENCY and will report HUB subcontract activity on a quarterly basis to RECEIVING AGENCY.

PERFORMING AGENCY and its subrecipient(s), if any, are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members).

ARTICLE 10. Certification Regarding License, Certificate, or Permit

RECEIVING AGENCY may pay PERFORMING AGENCY only for personnel who are duly licensed and/or qualified to perform required services.

PERFORMING AGENCY certifies that no owner, operator, or administrator of PERFORMING AGENCY has had a license, certificate, or permit revoked by any of the Texas state agencies listed below:

- * Adjutant General’s Department
- * Board of Private Investigators and Private Security Agencies
- * Interagency Council on Early Childhood Intervention
- * Texas Alcoholic Beverage Commission
- * Texas Cancer Council
- * Texas Children’s Trust Fund of Texas Council
- * Texas Commission for the Deaf and Hard of Hearing
- * Texas Commission on Alcohol and Drug Abuse
- * Texas Commission on Jail Standards
- * Texas Commission on Law Enforcement Officers Standards & Education
- * Texas Commission on Fire Protection
- * Texas Council on Sex Offender Treatment
- * Texas Criminal Justice Policy Council
- * Texas Department of Criminal Justice
- * Texas Department of Human Services
- * Texas Department of Mental Health & Mental Retardation
- * Texas Department of Protective and Regulatory Services
- * Texas Department of Public Safety
- * Texas Department of Health
- * Texas Health & Human Services Commission
- * Texas National Guard Armory Board
- * Texas Polygraph Examiners Board

- * Texas Rehabilitation Commission
- * Texas Youth Commission

ARTICLE 11. Conflict of Interest

PERFORMING AGENCY does not have nor shall it knowingly acquire any interest that would conflict in any manner with the performance of its obligations under this contract. Potential conflicts of interest include an existing business or personal relationship between PERFORMING AGENCY, its principal, or any affiliate or subrecipient with RECEIVING AGENCY, its board members, officers or employees, or any other entity or person involved in any way in any project that is the subject of this contract.

ARTICLE 12. Year-2000 Certification

PERFORMING AGENCY certifies that any supplied or supported software, hardware, firmware and micro code products used individually or together as a system to comply with RECEIVING AGENCY contract requirements will be year-2000-compliant on or before the date such hardware, software, firmware and systems are to be impacted. Year-2000-compliant means that such product operates “accurately” in the manner in which it was intended as it relates to date related operations when given a “valid date” containing century, year, month, and day.

For purposes of this Article, “supplied or supported software, hardware, firmware and micro code products” does not include software supported by RECEIVING AGENCY or an agency of the federal government.

PERFORMING AGENCY is responsible for installing and implementing year-2000-compliant versions of any software provided by RECEIVING AGENCY or an agency of the federal government which is used in performance of this contract.

For purposes of this Article,

- 1) “accurately” is defined to include the following:
 - a) calculations must be correctly performed using four-digit year processing;
 - b) functionality-on-line, batch including entry, inquiry, maintenance and updates must support four-digit year processing;
 - c) interfaces and reports must support four-digit year processing;
 - d) successful translation into year-2000 with the correct system date (e.g., 01/01/2000) must occur without human intervention;
 - e) processing with a four-digit year after transition to any date beyond the year 2000 must occur without human intervention;
 - f) correct results in forward and backward date calculation spanning century boundaries must be provided;
 - g) correct leap year calculations must be performed; and
 - h) processing correct results in forward and backward date calculation spanning century boundaries must occur, including the conversion of previous years currently stored as two digits;
- 2) “date integrity” shall mean all manipulations of time-related data (dates, durations, days of week, etc.) will produce desired results for all valid date values within the application domain;

- 3) “explicit century” shall mean date elements in interfaces and data storage permit specifying century to eliminate date ambiguity;
- 4) “extraordinary actions” shall be defined to mean any action outside the normal documented processing steps identified in the product’s reference documentation;
- 5) “general integrity” shall mean no value for current date will cause interruptions in desired operation - especially from the 20th to 21st centuries;
- 6) “implicit century” shall mean for any data element without century, the correct century is unambiguous for all manipulations involving that document;
- 7) “product” or “products” shall be defined to include, but is not limited to, any supplied or supported hardware, software, firmware and/or micro code;
- 8) “valid date” shall contain a two-digit month, a two-digit day and a four-digit year.

PERFORMING AGENCY and its subrecipient(s) must obtain a warranty from any vendor/licensor from which it obtains product(s) that product(s) delivered and installed under the contract/license shall be able to accurately process valid date data when used in accordance with the product documentation provided by the contractor/licensor and require no extraordinary actions on the part of PERFORMING AGENCY, its personnel, or its subrecipient(s). Products under the contract/license possess general integrity, date integrity, explicit and implicit century capabilities. If the contract/license requires that specific products must perform as a system in accordance with the foregoing warranty, then the warranty shall apply to those listed products as a system. The duration of this warranty and the remedies available to PERFORMING AGENCY or its subrecipient(s) for breach of the warranty shall be defined in, and subject to, the terms and conditions of the contractor’s standard commercial warranty or warranties contained in the contract/license; provided, that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to PERFORMING AGENCY or its subrecipient(s) shall include repair or replacement of any supplied product whose noncompliance is discovered and made known to the contractor/licensor in writing within ninety (90) days after final acceptance. Nothing in the warranty shall be considered to limit any rights or remedies PERFORMING AGENCY or its subrecipient(s) may otherwise have under the contract/license with respect to defects other than Year-2000 performance.

RECEIVING AGENCY will not hold PERFORMING AGENCY responsible if the information coming to PERFORMING AGENCY’s product/software from RECEIVING AGENCY is inaccurate or corrupt.

ARTICLE 13. Standards for Financial and Programmatic Management

PERFORMING AGENCY shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of UGMS as detailed in RECEIVING AGENCY’s Financial Administrative Procedures Manual. Those requirements shall include at a minimum:

- A. Financial planning, including the development of budgets that adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
- B. Financial management systems including accurate, correct, and complete payroll, accounting, and financial reporting records; cost source documentation; effective internal and budgetary controls; determination of

reasonableness, allowableness, and allocability of costs; and timely and appropriate audits and resolution of any findings; and,

- C. Billing and collection policies, including a fee schedule, a system for discounting or adjusting charges based on a person's income and family size, and a mechanism capable of billing and making reasonable efforts to collect from patients and third parties.

PERFORMING AGENCY must bill all third party payers for services provided under the Attachment(s) before submitting any request for reimbursement to RECEIVING AGENCY. A third party payer is any person or entity who has the legal responsibility for paying all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local and private funding sources. Third party billing functions will be provided by PERFORMING AGENCY at no cost to the client. PERFORMING AGENCY or its subrecipient must become a Medicaid provider if performing approved Texas Medicaid services authorized by the Attachment(s).

PERFORMING AGENCY, if designated a 501(c)(3) organization as defined in the Internal Revenue Service Code or a for-profit organization, and its governing board, shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. Such responsibility shall include: accountability for all funds and materials received from RECEIVING AGENCY; compliance with RECEIVING AGENCY rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and RECEIVING AGENCY's monitoring processes. Further, PERFORMING AGENCY's governing board shall ensure separation of powers, duties, and functions of board members and staff. Ignorance of any contract provisions or other requirements contained or referenced in this contract shall not constitute a defense or basis for waiving or appealing such provisions or requirements.

ARTICLE 14. Bonding

PERFORMING AGENCY is required to carry a fidelity bond or insurance coverage equal to the amount of funding provided under the contract Attachment(s) up to \$100,000 that covers each employee of PERFORMING AGENCY handling funds under this contract, including person(s) authorizing payment of such funds. The fidelity bond or insurance will provide for indemnification of losses occasioned by: 1) any fraudulent or dishonest act or acts committed by any of PERFORMING AGENCY's employees, either individually or in concert with others, and/or 2) failure of PERFORMING AGENCY or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment.

ARTICLE 15. Funding Participation Requirement

PERFORMING AGENCY agrees funds provided through this contract will not be used for matching purposes in securing other funding unless otherwise directed or approved by RECEIVING AGENCY.

ARTICLE 16. Allowable Costs and Audit Requirements

Only those costs allowable under UGMS and any revisions thereto plus any applicable federal cost principles are eligible for reimbursement under this contract. Applicable cost principles, audit requirements, and administrative requirements are as follows:

Applicable Cost Principles*	Audit Requirements*	Administrative Requirements*
OMB Circular A-87, State & Local Governments	OMB Circular A-133	UGMS
OMB Circular A-21, Educational Institutions	OMB Circular A-133	OMB Circular A-110
OMB Circular A-122, Non-Profit Organizations	OMB Circular A-133 and UGMS	UGMS
48 CFR Part 31, For-profit Organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular	Program audit conducted by an independent certified public accountant must be in accordance with Governmental Auditing Standards.	

* OMB Circulars shall be applied with the modifications prescribed by UGMS.

PERFORMING AGENCY must have incurred a cost within the applicable Attachment term to be eligible for reimbursement under this contract. PERFORMING AGENCY must incur cost(s) prior to requesting reimbursement under this contract. No later than 90 days after the end of the applicable Attachment term, RECEIVING AGENCY must receive vouchers from PERFORMING AGENCY for costs encumbered on or before the last day of the applicable Attachment term. Reimbursement requests submitted and postmarked more than 90 days following the end of the applicable Attachment term may or may not be reimbursed, at the discretion of RECEIVING AGENCY.

PERFORMING AGENCY or the AUTHORIZED CONTRACTING ENTITY shall arrange for a financial and compliance audit (Single Audit) if required by OMB Circular A-133 and/or UGMS. The audit shall be of PERFORMING AGENCY's or the AUTHORIZED CONTRACTING ENTITY's fiscal year. The audit must be conducted by an independent certified public accountant and in accordance with applicable OMB Circulars, Government Auditing Standards, and UGMS. PERFORMING AGENCY shall procure audit services in compliance with state procurement procedures, as well as with the provisions of UGMS.

If PERFORMING AGENCY is not required to have a Single Audit, a limited scope audit may be required. RECEIVING AGENCY will provide PERFORMING AGENCY with written audit requirements if a limited scope audit is required.

Within 30 days of receipt of the audit reports required by this section, PERFORMING AGENCY/AUTHORIZED CONTRACTING ENTITY shall submit a copy to RECEIVING AGENCY's Internal Audit Division.

ARTICLE 17. Terms and Conditions of Payment

For services satisfactorily performed pursuant to this contract, RECEIVING AGENCY will reimburse PERFORMING AGENCY for allowable costs. Reimbursements are contingent on a signed contract and will not exceed the total of each Attachment(s). PERFORMING AGENCY is entitled to payment only if the service, work, and/or product has been satisfactorily performed and authorized in accordance with this contract.

PERFORMING AGENCY must submit requests for reimbursement on a State of Texas Purchase Voucher (TDH Form B-13) or any other form designated by RECEIVING AGENCY. PERFORMING AGENCY shall submit vouchers for reimbursement monthly within 30 days following the end of the month covered by the bill. PERFORMING AGENCY shall submit a reimbursement request as a final close-out bill not later than 90 days following the end of the applicable Attachment term(s). Reimbursement requests submitted and postmarked more than 90 days following the end of the applicable Attachment term may not be paid, at the discretion of RECEIVING AGENCY.

For any contract Attachments beginning on or after September 1, 1999, PERFORMING AGENCY shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting cash payments including advance payments from RECEIVING AGENCY.

RECEIVING AGENCY is required to place PERFORMING AGENCY on Direct Deposit status in accordance with Texas Government Code, §403.016(c), VTCA. PERFORMING AGENCY will no longer receive copies of vouchers.

Funding from this contract may not be used to supplant state or local funds, but PERFORMING AGENCY shall use the funds from this contract to increase state or local funds currently available for a particular activity. PERFORMING AGENCY shall maintain its current level of support, if possible.

RECEIVING AGENCY shall determine whether costs submitted by PERFORMING AGENCY are allowable and reimbursable. If RECEIVING AGENCY has paid funds to PERFORMING AGENCY for unallowable or ineligible costs, PERFORMING AGENCY shall return the funds to RECEIVING AGENCY within 30 days of written notice.

RECEIVING AGENCY may withhold all or part of any payments to PERFORMING AGENCY to offset reimbursement for any ineligible expenditures that PERFORMING AGENCY has not refunded to RECEIVING AGENCY. RECEIVING AGENCY may take repayment from funds available under any contract Attachment, active or expired, in amounts necessary to fulfill PERFORMING AGENCY repayment obligations.

ARTICLE 18. Advance Payments

PERFORMING AGENCY may request a one-time advance for each Attachment only to meet immediate need for cash disbursement. PERFORMING AGENCY must make the request on State of Texas Purchase Voucher, accompanied by written justification and supporting documentation as specified in RECEIVING AGENCY's Financial Administrative Procedures Manual. The advance shall be requested at the beginning of the applicable Attachment period, or at a later time in the applicable Attachment period if circumstances so warrant. Approval of the request for advance will be at the discretion of RECEIVING AGENCY. If the request is approved, the voucher will be processed; if disapproved, RECEIVING AGENCY will provide written notification to PERFORMING AGENCY.

RECEIVING AGENCY will determine the amount of the advance, if any, by the amount and term of the applicable Attachment(s). For each Attachment, the amount of the advance shall not exceed an amount equal to the amount of the Attachment divided by the number of months covered by the Attachment multiplied by two (2). Advance funds will be expended during the applicable Attachment term so that, after the final monthly billing, PERFORMING AGENCY will not have advance funds on hand.

If the Attachment is amended to increase or decrease the total amount, RECEIVING AGENCY may make an upward or downward adjustment to the allowable advance in accordance with the above formula. If PERFORMING AGENCY is requesting an upward adjustment, PERFORMING AGENCY must submit a written justification and State of Texas Purchase Voucher in the amount necessary to correct the ratio. If the adjustment is downward, RECEIVING AGENCY will determine the amount of adjustment to the advance and the method of repayment.

ARTICLE 19. Program Income

PERFORMING AGENCY may develop a fee-for-service system and a schedule of fees for personal health services in accordance with the provisions of Chapter 12, Subchapter D, Health and Safety Code, VTCA; the Texas Board of Health rules covering Fees for Clinical Health Services, 25 TAC §1.91; and other applicable laws. No patient may be denied a service due to inability to pay.

All revenues directly generated by an Attachment(s) supported activity or earned only as a result of the Attachment(s) during the term of the Attachment(s) are considered program income. PERFORMING AGENCY shall identify and report this income utilizing the forms and time frames specified in the Reports Article of these provisions.

PERFORMING AGENCY shall utilize one of the following methods for applying program income:

1. Additive method - add the program income to the funds already committed to the project by both parties. Program income will be used by PERFORMING AGENCY to further the program objectives of the state/federal statute under which the Attachment(s) was/were made, and it shall be spent on the same project in which it was generated.
2. Deductive method - deduct the program income from the total allowable costs to determine the net allowable costs.

PERFORMING AGENCY must expend program income during the Attachment term in which it is earned, and may not carry forward to the succeeding term. Program income not expended in the term in which it is earned shall be refunded to RECEIVING AGENCY.

RECEIVING AGENCY may base future funding levels, in part, upon PERFORMING AGENCY's proficiency in identifying, billing, collecting, and reporting program income, and in utilizing it for the purposes and conditions of the applicable Attachment(s).

ARTICLE 20. Overtime Compensation

PERFORMING AGENCY shall not use any of the funds provided by the Attachment(s) hereto to pay the premium portion of overtime. PERFORMING AGENCY shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any compensation paid to an individual in addition to the normal rate of pay for hours worked in excess of normal working hours.

ARTICLE 21. Equipment and Supplies

In accordance with Health & Safety Code, §12.053, VTCA, title to all equipment and supplies purchased from funds from this contract will be in the name of PERFORMING AGENCY throughout the Attachment(s) term(s) or until the Attachment is terminated.

Equipment is defined as tangible nonexpendable property with an acquisition cost of more than \$1,000 and a useful life of more than one year, with the following exceptions: fax machines, stereo systems, cameras, video recorder/players, microcomputers, software, medical equipment, laboratory equipment, and printers. If the unit cost of these exception items is more than \$500, they will still be considered equipment, must be approved for purchase, and are considered capital assets for inventory purposes. Medical and laboratory equipment in this category is defined as microscopes, oscilloscopes, centrifuges, balances, and incubators. Medical and laboratory equipment not included in these five categories is not considered a capital asset unless the unit value is more than \$1,000. Supplies which may be necessary to carry out the contract include medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software less than \$500, plus any equipment with a purchase price including freight not to exceed \$1,000 per item, except those defined as "equipment."

Unless initially listed and approved in the Attachment(s), prior written approval from RECEIVING AGENCY is required for any changes to approved equipment purchases meeting the above equipment definition. To receive approval to purchase data processing hardware and software or enhancements, PERFORMING AGENCY must submit a detailed justification and specification which include a description of features, make and model, and cost, etc.

PERFORMING AGENCY shall maintain a property inventory and submit an annual cumulative report (TDH Form GC-11) to RECEIVING AGENCY no later than October 15th of each year. PERFORMING AGENCY shall administer a program of maintenance, repair, and protection of assets under this contract so as to assure their full availability and usefulness. In the event PERFORMING AGENCY is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided under this contract, it shall use the proceeds to repair or replace said assets.

In the event of bankruptcy, PERFORMING AGENCY shall sever RECEIVING AGENCY property, equipment, and supplies in possession of PERFORMING AGENCY from the bankruptcy, and title shall revert to RECEIVING AGENCY.

Upon termination or expiration of applicable Attachment(s), title to any remaining equipment and supplies purchased from funds under this contract reverts to RECEIVING AGENCY. Title may be transferred to any other party designated by RECEIVING AGENCY. RECEIVING AGENCY may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to PERFORMING AGENCY.

ARTICLE 22. Contracts with Subrecipients

PERFORMING AGENCY may enter into contracts with subrecipients unless restricted or otherwise prohibited in specific Attachment(s). PERFORMING AGENCY is responsible to RECEIVING AGENCY for the performance of any subrecipient.

Contracts with subrecipients shall be in writing and must include the following:

(Independent)

- * name and address of all parties;
- * a detailed description of the services to be provided;
- * measurable method and rate of payment and total amount of the contract;
- * clearly defined and executable termination clause;
- * beginning and ending dates which coincide with the dates of the applicable contract Attachment(s) or cover a term within the beginning and ending dates of the applicable contract Attachment(s);
- * access to inspect the work and the premises on which any of the work is performed, in accordance with the Inspections Article contained in this contract; and
- * all clauses required by state/federal statutes, executive orders, and their implementing regulations.

PERFORMING AGENCY agrees that all contracts with subrecipients containing a categorical budget shall include audit requirements referenced in the Allowable Costs and Audit Requirements Article of this contract, as appropriate.

Prior to entering into an agreement equaling \$25,000 or 25% of an Attachment, whichever is greater, PERFORMING AGENCY shall obtain written approval from RECEIVING AGENCY.

PERFORMING AGENCY shall ensure that:

- * subrecipients are fully aware of the requirements imposed upon them by state/federal statutes and regulations;
- * subrecipients comply with all financial management requirements as defined by RECEIVING AGENCY and the applicable OMB circulars;
- * subrecipients complete required audits;
- * an adequate tracking system is maintained to ensure timely receipt of any subrecipient's required audit reports and the resolution of any findings and questioned costs cited by these reports.

ARTICLE 23. Contracts for Procurement

PERFORMING AGENCY may enter into contracts for procurement unless restricted or otherwise prohibited in specific Attachment(s). PERFORMING AGENCY agrees that it shall be responsible to RECEIVING AGENCY for the performance of any subcontracted activity.

Contracts for procurement shall be in writing and must contain the following provisions:

- * Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (contracts other than small purchases).
- * Termination for cause and for convenience by PERFORMING AGENCY including the manner by which it will be effected and the basis for settlement (all contracts in excess of \$10,000).
- * Compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (all contracts and subgrants for construction or repair).
- * Compliance with §§103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5) (construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

- * Notice of RECEIVING AGENCY requirements and regulations pertaining to reporting.
- * Notice of RECEIVING AGENCY requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- * RECEIVING AGENCY requirements and regulations pertaining to copyrights and rights in data.
- * Access by the RECEIVING AGENCY, the federal grantor agency, the Comptroller General of the United States, the State of Texas or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- * Retention of all required records for three years after RECEIVING AGENCY makes final payments and all other pending matters are closed.
- * Compliance with all applicable standards, orders, or requirements issued under §306 of the Clean Air Act (42 USC 1857(h)), §508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
- * Mandatory standards and policies relating to efficiency which are contained in the state energy plan issued in compliance with the Energy Policy and Conservation Act (P. L. 94-163).

ARTICLE 24. Reports

Financial reports are required as provided in UGMS, and PERFORMING AGENCY shall file them regardless of whether expenses have been incurred.

For each Attachment, PERFORMING AGENCY shall submit a Financial Status Report, State of Texas Supplemental Form 269a (TDH Form GC-4a) within 30 days following the end of each of the first three quarters. PERFORMING AGENCY shall submit a final financial report on State of Texas Supplemental Form 269a (TDH Form GC-4a), not later than 90 days following the end of the Attachment term(s). PERFORMING AGENCY shall submit a State of Texas Purchase Voucher if all costs have not been recovered, or PERFORMING AGENCY shall refund excess monies if costs incurred were less than funds received. Failure to file a purchase voucher in a timely manner may result in RECEIVING AGENCY disallowing payment.

PERFORMING AGENCY shall submit program and progress reports required by RECEIVING AGENCY in the format agreed to by the parties. PERFORMING AGENCY shall provide RECEIVING AGENCY other reports including financial reports RECEIVING AGENCY determines necessary to accomplish the objectives of this contract. If PERFORMING AGENCY is legally prohibited from providing such reports, it shall immediately notify RECEIVING AGENCY.

ARTICLE 25. Inspections

RECEIVING AGENCY and, when federal funds are involved, any authorized representative(s) of the federal government have the right, at all reasonable times, to inspect or otherwise evaluate the work (including reviews of client or patient records and discussions with staff) performed by PERFORMING AGENCY and its subrecipient(s), if any, and the premises on which the work is being performed. PERFORMING AGENCY and its subrecipient(s) shall participate in inspections and provide reasonable access, facilities, and assistance to the representatives. All inspections and evaluations will be performed in such a manner as will not unduly interfere with the work.

PERFORMING AGENCY and its subrecipient(s), if any, shall give RECEIVING AGENCY, the federal government, and the Texas State Auditor, or any of their duly authorized representatives, access to any pertinent books, documents, papers, and client or patient records, if any, for the purpose of making audit, examination, excerpts, and transcripts of transactions related to contract Attachment(s). RECEIVING AGENCY will have the right to audit billings both before and after payment. Payment under Attachment(s) will not foreclose the right of RECEIVING AGENCY to recover excessive or illegal payments.

Any deficiencies identified by RECEIVING AGENCY upon examination of PERFORMING AGENCY's records will be conveyed in writing to PERFORMING AGENCY. PERFORMING AGENCY's resolution of findings will also be conveyed in writing to RECEIVING AGENCY within 30 days of receipt of RECEIVING AGENCY's findings. A RECEIVING AGENCY determination of either an inadequate or inappropriate resolution of the findings may result in sanctions which will remain in effect until RECEIVING AGENCY determines the deficiencies are properly remedied.

ARTICLE 26. Records Retention

PERFORMING AGENCY shall retain, preserve and make available all required records for a period of three years from the date of the last expenditure report submitted under contract Attachment(s) or until all audit questions are resolved, or until any court orders requiring record retention are dissolved, whichever time period is longer. Microfilm copies of records required to be kept under the Attachment(s) may be substituted for the originals in accordance with guidelines and procedures approved by RECEIVING AGENCY, provided that the microfilm procedures are reliable and are supported by an adequate retrieval system, unless otherwise ordered by a court of general jurisdiction.

ARTICLE 27. Client Records

Notwithstanding any other provision herein, if requested by RECEIVING AGENCY, PERFORMING AGENCY shall share all patient information with RECEIVING AGENCY when the contract involves patient care by the PERFORMING AGENCY.

RECEIVING AGENCY may require PERFORMING AGENCY, or any subrecipient, to transfer a client or patient record to another agency or to RECEIVING AGENCY if the transfer is necessary to protect either the confidentiality of the record or the health and welfare of the client or patient.

In the event of termination, RECEIVING AGENCY may require the transfer of client or patient records as authorized by law upon written notice to PERFORMING AGENCY, either to another entity that agrees to continue the service or to RECEIVING AGENCY.

At the end of the Attachment term, PERFORMING AGENCY shall give RECEIVING AGENCY access to the records or provide copies for audit, examination, evaluation, inspection, litigation, or other circumstances that may arise, to the extent authorized by law.

PERFORMING AGENCY, or any subrecipient, shall not otherwise transfer an identifiable client record, including a patient record, to another entity or person without written consent from the client or patient, or someone authorized to act on his or her behalf. Written consent must be given on a form provided by RECEIVING AGENCY or as otherwise authorized by law, including the Texas Medical Practice Act, Article 4495b, TRCS.

ARTICLE 28. Confidentiality

PERFORMING AGENCY shall have a system in effect to protect client or patient records and all other documents deemed confidential by law which are maintained in connection with the activities funded under this contract. PERFORMING AGENCY shall not disclose or transfer confidential client or patient information, including information required by the Reports Article, except in accordance with applicable law.

If providing direct client care, services, or programs, PERFORMING AGENCY shall implement RECEIVING AGENCY's workplace policies based on the model guidelines, and PERFORMING AGENCY shall educate employees and clients concerning the human immunodeficiency virus (HIV) and its related conditions, including acquired immunodeficiency syndrome (AIDS), in accordance with the Health and Safety Code, §§85.112-114, VTCA.

ARTICLE 29. Hold Harmless

PERFORMING AGENCY, as an independent contractor, agrees to hold RECEIVING AGENCY and/or the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments, and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of PERFORMING AGENCY under this contract.

ARTICLE 30. Sanctions

RECEIVING AGENCY may impose sanctions for any breach of contract, and will monitor PERFORMING AGENCY for both programmatic and financial compliance. RECEIVING AGENCY may, at its own discretion, impose one or more sanctions for each item of noncompliance and will determine sanctions on a case-by-case basis. A state or federal statute, rule, regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both.

RECEIVING AGENCY may:

- A. terminate all or a part of the contract. Termination is the permanent withdrawal of PERFORMING AGENCY's authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by PERFORMING AGENCY to obligate previously awarded funds. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY after termination of an award are not allowable unless expressly authorized by the notice of termination. Termination does not include: (1) withdrawal of funds awarded on the basis of the PERFORMING AGENCY's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a contract; (3) refusal to extend a contract or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception;
- B. suspend all or part of the contract. Suspension is, depending on the context, either (1) the temporary withdrawal of PERFORMING AGENCY's authority to obligate funds pending corrective action by PERFORMING AGENCY or its subrecipient(s) or pending a decision to terminate or amend the contract, or (2) an action taken by a suspending official in accordance with agency regulations implementing

Executive Order 12549 to immediately exclude a person from participating in contract transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY during a suspension are not allowable unless expressly authorized by the notice of suspension;

- C. disallow (deny both use of funds and matching credit for) all or part of the activities or action not in compliance;
- D. temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of advances or reimbursements to PERFORMING AGENCY or its subrecipient(s) for proper charges or obligations incurred, pending resolution of issues of noncompliance with contract conditions or indebtedness to the United States or to the State of Texas;
- E. permanently withhold cash payments. Permanent withholding of cash payment means that RECEIVING AGENCY retains funds billed by PERFORMING AGENCY or its subrecipient(s) for a) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; b) failure to comply with contract provisions; or c) indebtedness to the United States or to the State of Texas;
- F. deny contract renewal or future contract awards to a PERFORMING AGENCY for a certain period of time not to exceed five years;
- G. delay contract execution with PERFORMING AGENCY while other imposed or proposed sanctions are pending resolution;
- H. place PERFORMING AGENCY on probation. Probation means that PERFORMING AGENCY will be placed on accelerated monitoring for a period not to exceed six months at which time items of noncompliance must be resolved or substantial improvement shown by PERFORMING AGENCY;
- I. conduct accelerated monitoring of PERFORMING AGENCY. Accelerated monitoring means more frequent or more extensive monitoring will be performed by RECEIVING AGENCY than would routinely be accomplished;
- J. require PERFORMING AGENCY to obtain technical or managerial assistance;
- K. disallow requests for reimbursement by disapproving costs or fees submitted for payment or reimbursement by PERFORMING AGENCY;
- L. establish additional prior approvals for expenditure of funds by PERFORMING AGENCY;
- M. require additional, more detailed, financial and/or programmatic reports to be submitted by PERFORMING AGENCY;
- N. demand repayment from PERFORMING AGENCY;
- O. reduce the contract funding amount for failure to achieve or maintain the proposed level of service, to expend funds appropriately and at a rate which will make full use of the award, or to provide services as set out in the contract; and

P. impose other remedies provided by law.

RECEIVING AGENCY will formally notify PERFORMING AGENCY in writing when a sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the sanction(s), the reasons for imposing them, the corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the sanctions imposed. PERFORMING AGENCY is required to file, within 15 days of receipt of notice, a written response to RECEIVING AGENCY's program/division that sent the notice, acknowledging receipt of such notice and stating how PERFORMING AGENCY will correct the noncompliance or demonstrating in writing that the findings on which the sanctions are based are either invalid or do not warrant the sanction(s). If RECEIVING AGENCY determines that a sanction is warranted, and unless the sanction is subject to review (see Sanction Review Article), RECEIVING AGENCY's decision is final and PERFORMING AGENCY must take corrective action.

In an emergency, RECEIVING AGENCY may immediately terminate or suspend all or part of the contract, temporarily or permanently withhold cash payments, deny contract renewal or future contract awards, or delay contract execution by delivering written notice to a PERFORMING AGENCY, by any verifiable method, stating the reason for the emergency action.

An "emergency" is defined as the following:

- * PERFORMING AGENCY is noncompliant and the noncompliance has a direct adverse impact on the public or client health or safety. The direct adverse impact may be programmatic or financial, impacting health or safety by failing to provide services, providing inadequate services, providing unnecessary services, or utilizing resources so that the public or clients do not receive the benefits contemplated by the contract scope of work or performance measures;
- * PERFORMING AGENCY fails to achieve a performance measure;
- * PERFORMING AGENCY is reimbursed or requesting reimbursement for expenditures which are not in accordance with applicable federal or state laws and regulations or the provisions of the contract; or
- * PERFORMING AGENCY is expending funds inappropriately.

Whether PERFORMING AGENCY's conduct or inaction is an emergency shall be determined by RECEIVING AGENCY on a case-by-case basis and shall be based upon the egregious nature of the noncompliance or conduct.

ARTICLE 31. Sanction Review

PERFORMING AGENCY may request a review of the imposition of the following sanctions: termination of all or part of the contract, suspension of all or part of the contract, permanent withholding of cash payments, and denial of contract renewal or future contract awards.

PERFORMING AGENCY must make the request for review in writing to RECEIVING AGENCY within fifteen (15) days from the date of notification by providing written notice of the dispute to the person who signed the notification.

PERFORMING AGENCY's notice shall contain the following: (1) a copy of the letter from RECEIVING AGENCY notifying PERFORMING AGENCY of the sanction; (2) a specific description of each act that is the basis for the dispute; (3) the grounds upon which PERFORMING AGENCY bases the complaint; (4) an identification of the issue or issues to be resolved; (5) a precise statement of the relevant facts; (6) any

documentation in support of PERFORMING AGENCY's position; and (7) a statement and authorities in support of PERFORMING AGENCY's position.

Evidence that PERFORMING AGENCY properly notified RECEIVING AGENCY consists of any of the following documents: (1) signature on delivery card; (2) confirmation of a facsimile to the correct telephone number; or (3) signed acknowledgment of delivery.

RECEIVING AGENCY's representative will schedule a meeting or a conference call to attempt to resolve the issues in dispute. If the dispute is resolved, any resolution will be in writing and will be signed by all parties. If the dispute is not resolved, RECEIVING AGENCY's representative will notify PERFORMING AGENCY in writing. RECEIVING AGENCY will appoint a reviewer(s), who will review the information, who may permit or require additional information and who may grant, deny, or modify all relief requested in the written notice of dispute. The reviewer(s)'s decision will be in writing and will contain a discussion of the reason for the decision and the remedial action, if any. The reviewer(s) will send copies of the decision to all parties by any verifiable means. The decision of the reviewer(s) is final and is the final action of RECEIVING AGENCY for purposes of further proceedings.

A state statute or rule or a federal statute, regulation or guideline will prevail over the provisions of this Article unless the statute, rule, regulation or guideline can be read together with the provision or provisions of this Article to give effect to both.

ARTICLE 32. Breach of Contract

Any remedies set out in this contract are in addition to rights and remedies for breach of contract provided by law.

ARTICLE 33. Termination

Each Attachment shall terminate upon the expiration date of the Attachment unless extended by written amendment in accordance with the Amendments Article. Prior to completion of the contract term, all or a part of this contract may be terminated with or without cause as set out below.

A. Termination without cause.

- (1) Either party may terminate this contract with at least 90 days prior written notice to the other party.
- (2) The parties may terminate this contract by mutual agreement.
- (3) Either party may terminate this contract with at least 30 days prior written notice to the other party in the event state and/or federal funding for this contract is terminated, limited, suspended, or withdrawn.
- (4) RECEIVING AGENCY may terminate this contract when, in the sole determination of RECEIVING AGENCY, termination is in the best interest of the State of Texas.

B. Termination for cause.

- (1) Either party may terminate for material breach of contract with at least 30 days written notice to the other party.
- (2) RECEIVING AGENCY may terminate this contract, in whole or in part, for breach of contract or for risky conduct by giving at least 30 days written notice to PERFORMING AGENCY. "Risky conduct" may include one or more of the following:
 - (a) A court of competent jurisdiction finds that PERFORMING AGENCY has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
 - (b) PERFORMING AGENCY fails to communicate with RECEIVING AGENCY or fails to allow its employees or those of its subrecipients to communicate with RECEIVING AGENCY as necessary to the performance of the contract;
 - (c) PERFORMING AGENCY breaches a standard of confidentiality with respect to the services provided under this contract;
 - (d) RECEIVING AGENCY determines that PERFORMING AGENCY is without the personnel or resources to perform under the contract;
 - (e) RECEIVING AGENCY determines that PERFORMING AGENCY, its agent or another representative offered or gave a gratuity (e.g., an entertainment or gift) to an official or employee of RECEIVING AGENCY for the purpose of obtaining a contract or favorable treatment;
 - (f) PERFORMING AGENCY's management system does not meet the UGMS management standards; or
 - (g) PERFORMING AGENCY appears to be financially unstable. Indicators of financial instability may include one or more of the following:
 - (i) PERFORMING AGENCY fails to make payments;
 - (ii) PERFORMING AGENCY makes an assignment for the benefit of its creditors;
 - (iii) PERFORMING AGENCY admits in writing its inability to pay its debts generally as they become due;
 - (iv) If judgment for the payment of money in excess of \$50,000 (which is not covered by insurance) is rendered by any court or governmental body against PERFORMING AGENCY, and PERFORMING AGENCY does not (a) discharge the judgment or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within 30 days from the date of entry thereof, and within the 30-day period or a longer period during which execution of the judgment shall have been stayed, appeal therefrom and cause the execution

thereof to be stayed during such appeal while providing such reserves therefore as may be required under generally accepted accounting principles;

- (v) A writ or warrant of attachment or any similar process shall be issued by any court against all or any material portion of the property of PERFORMING AGENCY, and such writ or warrant of attachment or any similar process is not released or bonded within 30 days after its entry;
- (vi) PERFORMING AGENCY is adjudicated bankrupt or insolvent;
- (vii) PERFORMING AGENCY files a case under the Federal Bankruptcy Code or is seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against it under any such law;
- (viii) Any property or portion of the property of PERFORMING AGENCY is sequestered by court order and the order remains in effect for more than 30 days after PERFORMING AGENCY obtains knowledge thereof;
- (ix) A petition is filed against PERFORMING AGENCY under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation, or receivership law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within 30 days; or
- (x) PERFORMING AGENCY consents to the appointment of a receiver, trustee, or liquidator of PERFORMING AGENCY or of all or any part of its property.

C. Emergency termination. RECEIVING AGENCY may terminate the contract immediately upon notice to PERFORMING AGENCY in an emergency by any verifiable means. "Emergency" is defined in the Sanctions Article.

Either party may deliver written notice of intent to terminate by any verifiable method. If either party gives notice of its intent to terminate all or a part of this contract, RECEIVING AGENCY and PERFORMING AGENCY will try to resolve any issues related to the anticipated termination in good faith during the notice period. Upon termination of all or part of this contract, RECEIVING AGENCY and PERFORMING AGENCY will be discharged from any further obligation created under the applicable terms of this contract except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination. Termination does not, however, constitute a waiver of any remedies for breach of this contract. In addition, the obligations of PERFORMING AGENCY to retain records and maintain confidentiality of information shall survive this contract.

ARTICLE 34. Void Contract

RECEIVING AGENCY may hold a contract void upon determination that the contract award was obtained fraudulently or was otherwise illegal or invalid from its inception.

ARTICLE 35. Severability

If any provision of this contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue.

ARTICLE 36. Survival of Terms

Termination or expiration of this contract for any reason shall not release either party from any liabilities or obligations set forth in this contract that (a) the parties have expressly agreed shall survive any such termination or expiration, or (b) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

ARTICLE 37. No Waiver of Sovereign Immunity

THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY RECEIVING AGENCY OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT RECEIVING AGENCY OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.